THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 3854 OF 2006

BETWEEN:

M/S Jagdish Oil Mills,
Plot No.39, IDA Jeedimetla,
Rangareddy District and others.

...PETITIONERS

AND:

The State of Andhra Pradesh
Rep. by Inspector of Police, APTS
Vigilance RR(N) Circle, Gunrock Enclave,
Secunderabad and another.

...RESPONDENTS.

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WRIT PETITION NO. 3854 OF 2006

ORDER :

The petitioners seek quashing of the charge sheet dated 24.2.2004 filed in CC No. 23 of 2004 on the file of the Metropolitan Sessions Judge, Cyberabad at LB Nagar, Hyderabad.

The 1st petitioner is an industry engaged in the business of extracting edible oil from oil seeds; the 2nd petitioner is its

Managing Director and the 3rd petitioner a partner. The 1st petitioner entered into an agreement with the erstwhile APSEB for supply of electric energy under Category-III LT with a meter and service connection bearing No. SC 858/Cat.III-LT.

On the complaint of the 2nd respondent dt 3.7.2001, crime No. 1126 of 2001 was registered by the Anti Power Theft Squad Police Station (APTS PS) against the petitioners alleging theft of electrical energy and commission of offences u/Secs. 39 and 44 of the Indian Electricity Act 1910 (for short 'the Act'). The complaint alleged that at the time of inspection of the 1st petitioner's premises on 23.6.2001 the petitioner was present who claimed himself to be the son of the 2nd petitioner; the inspection of the meter in the premises of the 1st petitioner disclosed that the meter was not responding in any of the three phases; the meter box seal was found tampered; the meter seal wire was found tampered; and on opening the meter box the meter cover seal, the meter terminal cover seals were found tampered. The complaint further asserts that on the testing of the meter in the MRT Lab on 3.7.2001 in the presence of the 3rd petitioner it was seen that the meter was tampered with and was not recording consumption commensurate with the connected load. The complaint alleged that the consumer was found indulging in pilferage of energy by tampering with the meter box seal, meter terminal cover seal and meter cover seal and to have gained access to the internal mechanism of the meter with a view to suppress the actual consumption.

After investigation a charge sheet was filed on 24.2.2004 by the 1st respondent. The charge sheet asserted that on the basis of the investigation it is revealed that the petitioners 2 and

3 indulged in pilferage of energy and caused loss to the AP Central Power Distribution Company Limited (APCPDCL) to the extent of Rs.8,73,807/- and that these accused (A2 and A3) are therefore liable.

Simultaneously with the prosecution, proceedings for final assessment of the liability of the petitioners for the alleged pilferage including the penal amounts and other proceedings were undertaken. A provisional assessment and thereafter final assessment were made. Appeals were preferred and are pending. In the case on hand we are not concerned with these proceedings.

CC No. 23/04 was registered against the petitioners before the Court of the Metropolitan Sessions Judge, Cyberabad. In the above case, the petitioners preferred Crl.M.P.No. 608 of 2005 u/Sec. 227 of the Code of Criminal Procedure (for short 'the Code') seeking discharge from the case. In support of this application it was pleaded –

(A) That a false case was foisted against the petitioners;

(B) That the petitioners have not pilfered the energy nor tampered with the meter or accompanying instruments;

(C) That the petitioners do not have any knowledge about the meter and its functions or about the meter seal; and

(D) That the respondents being employees of the Vigilance Wing of the APSEB are not an independent investigation agency, have a bias in favour of the APSEB and against the petitioners and therefore prosecution could not be proceeded with on the basis of such biased investigation.

By the order dated 17.2.2006 Crl.M.P. No. 608/05 was dismissed. The learned Metropolitan Sessions Judge, Cyberabad held that there was prima facie material presented

by the APTRANSCO against the petitioners which justified the framing of charges u/Secs. 39, 44C and 49A of the Act, though the Electricity Act 2003 is not applicable and that the other contentions that the Vigilance Wing of APSEB is not authorised to register the crime under the Act and to file charge sheet are misconceived as according to the Board Proceedings dt 27.11.1993 it is apparent that the State of Andhra Pradesh has created Anti Power Theft Squad Police Stations including the Inspector, APTS, Hyderabad, covering Ranga Reddy and Medak district and that the Inspector, APTS, the Investigating Officer was thus a Police Station. The court declined to pronounce upon the merits of the case, as this must be decided at the trial of the case. As there was prima facie material to frame the charges the court below rejected the Crl.M.P.

After the rejection of the petitioners' application seeking discharge, the present writ petition is filed seeking a declaration that the charge sheet dt 24.2.2004 filed by the 1st respondent in CC No. 23/04 on the file of the 1st Additional Metropolitan Sessions Judge, RR District is "illegal, contrary to the provisions of law" and that the same be quashed.

Sri Venkata Vara Prasad, the learned counsel for the petitioners, apart from reiterating what had been pleaded by the petitioners in the discharge application and reiterating the petitioners' denial of involvement in the offences they are charged with, has presented two contentions for consideration:

(A) That the 1st respondent is not a 'Police Officer' within the meaning of the said expression in the Code as he is not invested with general investigation power and is therefore incompetent to have filed the charge sheet;

(B) That as the respondents are employees of the

APTRANSCO which is the complainant, they must be considered as being biased in favour of the complainant and therefore any prosecution on the basis of such investigation done by these respondents cannot be maintained and must perish;

In G.O.Ms. No. 184 Energy, Forests, Environment, Science and Technology (SCR-1) Department, dated 22.7.1992 the State of Andhra Pradesh by notification created a specific Anti Power Theft Squad Police Station, designating specified officers above the rank of Sub Inspector of Police as officers in charge of the APTS PS. According to this notification the Inspector, APTS Hyderabad, is designated as the officer incharge of one such notified APTS PS, having jurisdiction in respect of Ranga Reddy and Medak Districts. Pursuant thereto, the APSEB by BPMS (DIG & S) No.8, dated 27.11.1993, in exercise of the available powers u/Sec.79 of the Electricity (Supply) Act, 1948 r/w Sec.50 of the Indian Electricity (Amendment) Act 1986, authorised all officers incharge of APTS PS as notified by the Government supra, and all officers of and above the rank of Assistant Engineer/Additional Assistant Engineer, to institute prosecution or make complaints to the jurisdictional officers in charge of the PS, for initiating prosecutions when offences u/Secs. 39, 41, 43 or 44 of the Act or Rule 56 r/w 138 of the Indian Electricity Rules 1956 are committed or there are reasons to believe have been committed, within their respective jurisdiction.

Sec.2(s) of the Code defines a 'Police Station' as meaning any post or place declared generally or specially by the State Government to be a Police Station, including any local area specified by the State Government in this behalf. Sec.173 of the Code enacts, to the extent relevant and material for the purpose

of this case, that as soon as an investigation (under Ch. XII) is completed, the officer incharge of the PS shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the prescribed form.

Since the 1st respondent is a designated officer incharge of a notified APTS PS in view of the notification by the State Government in GO Ms No. 184, dt 22.7.1992, the 1st respondent is competent to file (report u/Sec. 173 of the Code) the charge sheet, as an officer incharge of a police station, within the meaning of Sec. 173 of the Code.

In support of the contention that the 1st respondent is incompetent to file the charge sheet, the learned counsel for the petitioner relied on the following decisions:

The State of Punjab v Barkat Ram ([1]); and Eknath Shankarrao Mukkawar v State of Maharashtra ([2]).

In ***Barkat Ram*** (1 supra) the core issue that fell for consideration by the Supreme Court was whether a Customs Officer either under the Land Customs Act 1924 or the Sea Customs Act 1878, is a Police Officer within the meaning of that expression in Sec.25 of the Indian Evidence Act. Barkat Ram was a engine driver of a train which had come from Pakistan. As the train reached Amritsar, on the basis of an information as to the smuggling of gold by the engine crew, the land customs staff boarded the engine at arrival in Amritsar, conducted a search and recovered a quantity of gold lying concealed under the coal in the front part of the coal tender in the engine. On interrogation, the accused Barkat Ram *inter alia* made some confessions to the Customs Officer. He was eventually tried for the offences punishable u/Sec.23(1) of the Foreign Exchange

Regulation Act 1947 and Sec. 167(81) of the Sea Customs Act 1878 as amended in 1955. The Magistrate convicted Barkat Ram; the conviction was confirmed by the appellate court but was set aside in revision by the High Court. The High Court held that a Customs Officer was a Polcie Officer within the meaning of that expression in Sec.25 of the Evidence Act and therefore confessional statements made to them were inadmissible in evidence and if these statements were excluded from consideration, there was no other evidence to sustain the conviction. The High Court reversed the conviction on yet another ground which is not germane for the present purpose. It is in this context that the issue whether a Customs Officer is a Police Officer was examined by the Supreme Court. the Supreme Court per majority [Rabhubar Dayal J, for himself and for J.L. Kapur J, with K. Subba Rao J dissenting] held that Customs Officers are not Police Officers for the purposes of Sec.25 of the Evidence Act and accordingly allowed the appeals by the State. In coming to this conclusion the Supreme Court majority examined the duties and powers of a Police Officer vis-à-vis a Customs Officer. The Supreme Court held that of the various duties mentioned in the Police Act 1861, the more important are to collect and communicate intelligence effecting the public peace, to prevent the commission of offences and public nuisance and to detect and bring offenders to justice and to apprehend persons whom the Police Officer is authorised to apprehend. The Supreme Court concluded that in view of the nature of duties imposed on police officer, the nature of the authority conferred and the purpose of the Police Act, the powers which the police officers enjoy are powers for the effective prevention and detection of crimes in order to maintain law and order. The court on comparative analysis held that the

powers of a Customs Officer are not identical. Powers are conferred on a Customs Officer to check smuggling of goods and for the due realization of customs duties and to determine the action to be taken in the interest of the revenue of the country by way of confiscation of goods on which no duty was paid and by imposing fine and penalty. On an analysis of the provisions of the Land Customs Act 1924 and the Sea Customs Act 1878, the Supreme Court held that a Customs Officer is more concerned with the goods and customs duty than with the offenders. The Supreme Court concluded that the duties of a Customs Officer are quite distinct from those of a Police Officer and that a Customs Officer possessing certain powers which may have similarity with those of Police Officer for the purpose of detecting the smuggling of goods and the persons responsible for it, would not make them Police Officers. Elucidating the legislative intent of Sec.25 of the Evidence Act, the Supreme Court held that the underlying intent of Sec.25 was to exclude from the evidence confessions made to the regular Police which had a very bad reputation for the methods it employs in investigation, especially in forcible extracting of confessions with the object of securing a conviction. The past conduct of the members of the police organization justify that provision and it could not be concluded that the legislature intended that all persons who may have to investigate or arrest persons or seize articles in pursuance of any particular law, of which at the time the legislature had no conception, should be considered to be so unreliable that any confession made to them must be excluded just as a confession made to a regular Police Officer. As the provision (Sec.25 of the Indian Evidence Act) does not use a wide and comprehensive phraseology such

as enacting the inadmissibility of any confession made to any officer whose duty it is to detect and prevent the commission of an offence, this provision must receive a strict interpretation confined only to regular Police Officers, held the Supreme Court.

Barkat Ram (1 supra) is not an authority for the proposition that notwithstanding the State Government's notification of APTS PS as a Police Station vide G.O.Ms. No. 184, dt 22.7.1992, the 1st respondent is not an officer incharge of a Police Station within the meaning of Sec.123 of the Code. The question that fell for consideration in ***Barkat Ram*** (1 supra) was only whether a confession made to a Customs Officer who was conferred some of the functions of a police officer could be treated as a confession made to a Police Officer and therefore inadmissible in evidence u/Sec.25 of the India Evidence Act. The ratio in ***Barkat Ram*** (1 supra) proceeds on an interactive analysis of the provisions of the Land Customs Act 1924, the Sea Customs Act 1878, the Police Act 1861 and Sec. 25 of the Indian Evidence Act. In fact, in Para-29 of ***Barkat Ram*** (1 supra) the Supreme Court majority specifically clarified that it does not express any opinion on the question whether officers or departments other than the Police, on whom the powers of an officer incharge of a police station under Chapter XIV of the Code have been conferred, are Police Officers or not for the purposes of Sec. 25 of the Indian Evidence Act.

In ***Eknath*** (2 supra) the appellant was convicted by a Judicial Magistrate u/Sec. 16(1)(a)(i) proviso (i) r/w Sec. 2(i)(1) and Sec. 7(i) of the Prevention of Food Adulteration Act, 1954 and sentenced to imprisonment and a fine, on a charge of selling adulterated chilli powder containing ash in excess of the

permissible limit. The chilli powder sample was seized by a Food Inspector, sent for analysis, a report received and filed into the court. The learned Magistrate concluded that the chilli powder was adulterated within the meaning of Sec.2(i)(1) although the prosecution was on the basis of the article being adulterated within the meaning of Sec. 2(i)(iii) of the Food Adulteration Act. The State's appeal against the inadequacy of the sentence awarded to the appellant was allowed and the sentence enhanced. Before the Supreme Court on behalf of the appellant it was *inter alia* contended that the State's appeal to the High Court u/Sec. 377(1) of the Code was incompetent in view of the provisions of Sec.377(2). On an analysis of the relevant provisions of the Code i.e., Sec. 377(1) and (2), the Supreme Court held that as the Food Adulteration Act does not contain an express provision (like Sec.3 of the Delhi Special Police Establishment Act) empowering the making of investigation under the Act, the Food Inspector cannot be held to be empowered to make an investigation under the Food Adulteration Act. Therefore, held the Supreme Court, Sec.377(2) of the Code is not attracted and an appeal by the State u/Sec. 377(1) of the Code is maintainable.

Eknath (2 supra) also does not therefore lend support the contention of the petitioner in this case that the chargesheet filed by the 1st petitioner is incompetent as the 1st respondent is not an officer incharge of the Police Station within the meaning of Sec.173 of the Code.

Even on first principles, the contention of the petitioner is fundamentally misconceived. Once the State Government has issued a notification constituting the APTS PS and specifying the designated officers including the 1st respondent herein as

officers in charge of such notified PS, the 1st respondent is competent to file a report u/Sec 173 of the Code.

The second principal contention on behalf of the petitioner is as regards the alleged official bias of the respondents on account which it is contended, they are incompetent to conduct the investigation.

Though not so formulated the petitioners are contending that the respondents are disqualified to investigate the offences alleged against the petitioners on account of official bias. It is too well established in administrative law that a general official bias will rarely invalidate the proceedings. A mere general interest in the general object to be pursued would not disqualify an authority even from determining a matter. There must be some direct and causal nexus with the very subject matter to disqualify even a quasi judicial adjudicator. In ***Gullapalli Nageswara Rao v APSRTC ([3])*** the Supreme Court rejected the challenge to a nationalization proceedings on the ground that the objections to it were heard by the Secretary of the Department concerned. Again in ***Kondala Rao v AP Transport Corporation ([4])*** this court rejected the contention that the Minister had pre-judged the issues as he had earlier presided over a meeting of an Official Committee in which nationalization was favoured and thereafter heard objections to the claim of nationalization as the Minister of Transport.

In the case on hand the 1st respondent is not an adjudicator or the Judge. He is merely an investigating officer who conducts investigation, submits a final report and marshals the evidence to be presented in support of the prosecution of the petitioners. It is ultimately the Criminal Court that will have to weigh and evaluate the evidence to come to judgment. It is not

the petitioners' case that either of the respondents herein had any personal interest in the particular offence the petitioners are charged with or have any specific prejudice against the petitioners. That is not the plea. The allegation is a vague allegation that merely since the respondents are the employees of APTRANSCO they are somehow interested to ensure the conviction of the petitioners. There is neither a factual foundation nor any supporting legal principle which justifies the conclusion by this court that the respondent is incompetent to function as an investigation officer. By extension of the petitioners' logic even police officers are incompetent to investigate offences since invariably in prosecutions in respect of serious offences under the Indian Penal Code, it is the State which is the prosecutor and Police Officers are employees of the State. The contention is fundamentally misconceived and must therefore be rejected with the respect it deserves.

On the aforesaid analysis the writ petition is without merits and is accordingly dismissed.

As the chargesheet in CC No.23 of 2004 was filed on 24.2.2004, it is just and proper that the trial must proceed with utmost expedition and the Court of Metropolitan Sessions Judge, Cyberabad must come to judgment at the earliest point of time. The learned Metropolitan Sessions Judge, Cyberabad, is therefore requested to try and dispose of CC No. 23 of 2004 expeditiously, preferably within a period of 3 months from the date of receipt of a copy of this order. The respondents are directed to assist in the expeditious disposal of CC No. 23 of 2004.

No order as to costs.

Date: ----------

Pvsn Justice G. Raghuram

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[1] AIR 1962 SC 276

[2] AIR 1977 SC 1177

[3] AIR 1959 SC 1376

[4] AIR 1957 AP 614